

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED: 3/10/2020

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JOSHUA DAVIS,

Plaintiff,

-against-

CITY OF NEW YORK, Police Officer
MICHAEL GENKERELL, Shield # 22527 and
JOHN DOE 1 through 5, individually and in
their official capacities,

Defendants.
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19-CV-7387 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

WHEREAS on January 17, 2020, Defendants moved to dismiss Plaintiff's Complaint (Dkt. 19);

WHEREAS on February 28, 2020, the Court ordered Plaintiff, who is represented by counsel, to respond to Defendants' motion to dismiss by March 6, 2020, and warned Plaintiff that failure to file an opposition would lead the Court to treat the motion to dismiss as unopposed (Dkt. 22);

WHEREAS notice of the Court's order was electronically mailed to Plaintiff's counsel on February 28, 2020. *See* Dkt. 22;

WHEREAS Plaintiff has not filed an Opposition nor has he responded in any way to the Court's February 28, 2020 Order;

IT IS HEREBY ORDERED THAT:

1. Defendants' motion to dismiss is GRANTED. By failing to address any of Defendants' arguments in support of their motion to dismiss, Plaintiff has abandoned his claims. *See Hutson v. N.Y.C. Police Dep't*, No. 15-CV-8797, 2017 WL 727544, at *3 (S.D.N.Y. Feb.

23, 2017) (dismissing Plaintiff's *Monell* claim as abandoned because he failed to respond to or even mention Defendants' arguments to dismiss the claim); *Sullivan v. City of N.Y.*, No. 14-CV-1334, 2015 WL 5025296, at *4 (S.D.N.Y. Aug. 25, 2015) (in a Section 1983 case, denying plaintiff's motion to reconsider dismissal of claims against some defendants on the basis that plaintiff abandoned those claims because he did not respond to defendants' motion to dismiss); *Brandon v. City of N.Y.*, 705 F. Supp. 2d 261, 268 (S.D.N.Y. 2010) (in a Section 1983 case, dismissing some of plaintiff's claims as abandoned on the basis that he did not raise any arguments opposing defendants' motion to dismiss those claims).

2. Although the Court dismisses Plaintiff's claims as abandoned, the Court also notes that his claims are independently barred. On May 7, 2019, in consideration of a settlement of \$9,000.00, Plaintiff executed a General Release, releasing the City and its employees from "all liability, claims, or rights of action alleging a violation of civil rights ... that occurred through the date of this release." Dkt. 20, Ex. A. Because Plaintiff's instant complaint alleges a violation of his civil rights in connection with an arrest that occurred on May 20, 2017, two years prior to the date of the Release, it is barred by the express terms of the Release. *See Pampillonia v. RJR Nabisco, Inc.*, 138 F.3d 459, 463 (2d Cir. 1998) (in New York, "a release that is clear and unambiguous on its face and which is knowingly and voluntarily entered into will be enforced."); *Tromp v. City of N.Y.*, 465 F. App'x 50, 51 (2d Cir. 2012) ("Where the language of [a] release is clear, effect must be given to the intent of the parties as indicated by the language employed.") (internal quotation marks omitted).

The Clerk of Court is respectfully directed to close the open motion at docket entry 19, dismiss the Complaint with prejudice, and mark this case closed.

SO ORDERED.

Date: March 10, 2020
New York, New York



VALERIE CAPRONI
United States District Judge